

Nina Bell, Executive Director  
Northwest Environmental Advocates  
P.O. Box 12187  
Portland, OR 97212-0287

Dear Ms. Bell:

Thank you for your July 17, 2014 letter stating your extensive concerns with Oregon's water quality trading program. We understand the issues you raised with the NPDES permits Oregon DEQ has issued so far that authorize the permittees to meet their temperature limits through purchasing temperature credits. Water quality trading, and especially, trading between point sources and nonpoint sources, continues to interest a wide range of stakeholders because of its potential to provide greater environmental benefits than technology-based controls and at less cost. However, because of the lack of clear direction from the Clean Water Act as to how it should be implemented, much confusion remains as to how to design a trading program that meets all the regulatory requirements that apply to issuing NPDES permits.

As you are aware, Oregon first tested the concept of water quality trading with a pilot project that resulted in the Clean Water Services (CWS) permit that authorized it to create and use temperature credits to offset the temperature limit it needed to meet in its permit. The model established by CWS is one that illustrates what a leading sewage treatment plant operator can do with significant in-house resources to draw upon. The City of Medford's permit was ODEQ's next effort to provide an example that would work for cities with more limited resources. It introduced an important element, in which third parties would be able to implement restoration projects in order to sell the credits to the permittee, and thereby free up the permittee from direct involvement in managing restoration projects. This is a compliance option that is attractive to many permittees because it is intended to be as straightforward as signing a contract to have a technology or plant upgrade installed to comply with a water quality limit. However, your comments submitted to ODEQ after the permit was issued, as well as the issues raised in your July 17 letter, showed there are many important details it needed to work out before that trading model should be used in another permit.

EPA Region 10 wants to see ODEQ strengthen its water quality trading program, so that is why we provided such substantive comments on the draft permit proposed for the City of Wilsonville. Unfortunately, Willsonville withdrew its proposal for the modified permit before ODEQ could revise the permit and thereby show how it would respond to both our comments and yours. We were also greatly disappointed in Wilsonville's decision to go ahead with the installation of a cooling tower to meet their temperature limit, and now there will be a visible symbol of a lost opportunity to spend limited public dollars on meaningful actions to reintroduce more natural processes to keep the river cool, rather than mechanical solutions that provide very narrow benefits to the watershed.

We remain committed to working with ODEQ to strengthen its water quality trading program, along with the environmental agencies responsible for those in Idaho and Washington. We believe the "Joint Recommendations" project funded by the NRCS grant, and that is being led by the Willamette Partnership and The Freshwater Trust, is the best opportunity to do the important first step, which is to sort through what are the critical elements in designing a successful trading program. The project also provides an important venue for the region's water quality regulators to identify and discuss the best

options for addressing difficult issues that quickly emerge with trading. The draft document, which will soon be released for public input, is an extensive set of recommended practices and elements ("Joint Recommendations") for each state to consider when designing a water quality trading program, but is by no means a blueprint or a manual for a watershed's stakeholders to implement and begin trading. A tremendous amount of hard work will still need to take place for Oregon to revamp its program, but we believe the draft Joint Recommendations document identifies important options for them to consider adopting that will address many of the serious issues you identified.

It is up to ODEQ to decide the process it would like to use to strengthen its water quality trading program, and we are urging them to move from the Internal Management Directive approach and instead use a transparent process for establishing a rule or guidance and one that invites public comment and participation. The complexity of the issues that need to be considered can only be worked through in an open process where a multitude of interests are represented.

I encourage you to actively participate in the process ODEQ establishes and work with them to strengthen the state's water quality trading program, and also to advocate for the necessary investment in the processes that are essential for water quality trading to deliver on its promise to provide a greater and more cost effective environmental benefit to the watershed than traditional technology-based compliance.

Sincerely,

Dan Opalski  
Director